

APPEAL NO. 021554
FILED JULY 31, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was originally opened on January 10, 2002. The appellant (claimant) did not appear at the hearing; however, the respondent (carrier) submitted documentary evidence. A show cause letter was sent to the claimant and she apparently responded because the hearing was reopened on April 23, 2002. The claimant again failed to appear at the April 23, 2002, session and a second show cause letter was sent to the claimant. The claimant did not respond to that letter and the record closed on May 8, 2002. With respect to the issues before her, the hearing officer determined that the first certification of maximum medical improvement (MMI) and impairment rating (IR) did not become final under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(e) (Rule 130.5(e)) and that the claimant did not have disability, as a result of her _____, compensable injury, from May 1, 1992, to May 21, 1993. In her appeal, the claimant essentially argues that the hearing officer's disability determination is against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance. Neither party appealed the hearing officer's determination that the first certification of MMI and IR did not become final pursuant to Fulton v. Associated Indem. Corp., 46 S.W.3d 364 (Tex. App.-Austin 2001, pet. denied).

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not have disability, as a result of her _____, compensable injury, from May 1, 1992, to May 21, 1993. Initially, we note that in a prior contested case hearing, a different hearing officer determined that the claimant did not have disability due to her _____, compensable injury, from May 1, 1992, to the date of the hearing on February 2, 1993. That decision was appealed and was affirmed by the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 93187, decided April 23, 1993. As a result, the hearing officer in this case did not have jurisdiction over the disability issue for the period from May 1, 1992, to February 2, 1993, as that issue had been finally resolved by the Texas Workers' Compensation Commission. Thus, the only issue properly before the hearing officer was the question of whether the claimant had disability for the period from February 3 to May 21, 1993, due to her _____, compensable injury. As we noted above, the claimant, who had the burden to prove disability, did not appear at either of the sessions of the hearing and did not respond to the April 23, 2002, show-cause letter by the May 8, 2002, deadline for doing so. Because the claimant did not present any evidence on the disability issue, we find no merit in the assertion that the hearing officer erred in determining that issue against the claimant.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLEY
TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Michael B. McShane
Appeals Judge